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Attorneys for Defendants  
SCOTTSDALE INSURANCE COMPANY and  
NATIONWIDE MUTUAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MARK KELLY, individually, KELLY'S  
MANAGEMENT MS, INC., and  
SOUTHWEST CONCESSIONS, INC.,

Plaintiffs,

vs.

SCOTTSDALE INSURANCE COMPANY,  
subsidiary of Nationwide Mutual Insurance  
Company, NATIONWIDE MUTUAL  
INSURANCE COMPANY, an Ohio insurance  
company, and DOES 1 through 10, inclusive,

Defendants.

Case No. 5:24-cv-01887-PCP

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: May 23, 2024  
Time: 1:00 p.m.  
Courtroom: 8, 4<sup>th</sup> Floor  
Judge: Hon. P. Casey Pitts

Pursuant to Federal Rule of Civil Procedure 26(f) and Civil L.R. 16-9(a), plaintiffs Mark Kelly, Kelly's Management MS, Inc., and Southwest Concessions, Inc. (collectively "Plaintiffs") and defendants Nationwide Mutual Insurance Company ("Nationwide") and Scottsdale Insurance Company ("Scottsdale") submit this Joint Case Management Statement for the Case Management Conference set for May 23, 2024, and respectfully request that the Court adopt it as the Case Management Order. (Nationwide and Scottsdale are collectively referred to as "Defendants." Plaintiffs and Defendants are collectively referred to as the "Parties.")

1. **Jurisdiction and Service**

On February 28, 2024, Plaintiffs commenced an action in the Superior Court of the State of California for the County of Santa Clara. On February 29, 2024, Plaintiffs served the Summons and Complaint in the Superior Court Action on Nationwide through its agent for service of process in California. On March 4, 2024, Plaintiffs served the Summons and Complaint in the Superior Court Action on Scottsdale through its agent for service of process in California. Nationwide and Scottsdale answered the Complaint on March 26, 2024. All parties have been served and the Parties believe there are no issues regarding personal jurisdiction or venue.

On March 27, 2024, Defendants removed the case to this Court pursuant to 28 U.S.C. section 1441. This Court has original jurisdiction over the Superior Court action under 28 U.S.C. section 1332. Plaintiffs and Defendants are diverse and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

2. **Facts**

Plaintiffs seek damages with respect to Defendants' refusal to fully indemnify settlement in an underlying lawsuit filed by Rocio Rivera against Plaintiffs and an individual named Javier Andrade Escoto, who Rivera alleged were her employers ("Underlying Lawsuit"). The Underlying Lawsuit arose out of bodily injuries allegedly sustained by Rivera while on the job. Rivera also alleged wage and hour and other Labor Code violations.

Plaintiffs tendered the Underlying Lawsuit to Scottsdale pursuant to an insurance policy issued to the "Members of the American Vendors Association," policy number CPS2609265 (the "Policy"). Scottsdale provided a defense pursuant to a reservation of rights letter, dated June 30, 2022.

1 Scottsdale disclaimed coverage for Ms. Rivera’s wage and hour claims, and reserved its right to  
 2 disclaim coverage under the worker’s compensation and employer’s liability exclusions, as well as  
 3 the Employment-Related Practices Endorsement, “[t]o the extent Mr. Kelly, Kelly’s Management or  
 4 Southwest Concessions is found to have been [Ms. Rivera’s] employer.” Scottsdale additionally  
 5 agreed to defend Mr. Kelly and Southwest, but disclaimed coverage for Kelly’s Management  
 6 because it was not an insured. Nevertheless, Scottsdale offered to provide Kelly’s Management a  
 7 “courtesy defense.”

8 The Underlying Lawsuit was subsequently settled for \$250,000. In light of evidence disclosed  
 9 during discovery that Mr. Kelly, not Mr. Escoto, was Ms. Rivera’s employer, Scottsdale repeatedly  
 10 advised Mr. Kelly that that it had no duty to indemnify. Nevertheless, Scottsdale offered to make a  
 11 “gratuitous” contribution to the settlement in the amount of \$15,000.

12 Plaintiffs commenced this coverage action against Scottsdale and Nationwide on February 28,  
 13 2024, asserting claims for: (1) Breach of Contract, (2) Breach of the Implied Covenant of Good  
 14 Faith and Fair Dealing, (3) Breach of Contractual Duty to Pay a Covered Insurance Claim, (4) Bad  
 15 Faith Denial of Insurance Claim, (5) Violations of California Business and Professions Code section  
 16 17200, et seq., and (6) Unjust Enrichment.

17 This coverage action is *only* about Scottsdale’s alleged failure to *fully* indemnify Plaintiffs.  
 18 Scottsdale defended the Underlying Lawsuit. Because Scottsdale already contributed \$15,000 to the  
 19 \$250,000 settlement of Ms. Rivera’s claim, Plaintiffs seek an additional \$235,000 in compensatory  
 20 damages, as well as statutory damages, punitive damages, attorneys’ fees, pre- and post-judgment  
 21 interest, and equitable relief (including disgorgement and restitution).

### 22 3. **Legal Issues**

23 One or more party contends the following legal issues are in dispute. This list is non-  
 24 exhaustive and subject to modification based on ongoing investigation, analysis and discovery:

- 25 a. Whether Nationwide is a proper party to the action.
- 26 b. Whether Defendants breached the Policy.
- 27 c. Whether Plaintiffs breached the Policy.
- 28 d. Whether Defendants have a duty to indemnify Plaintiffs.

- e. Whether various coverage exclusions in the Policy (i.e. expected or intended injury, contractual liability, workers compensation, employer's liability, etc.) apply.
- f. Whether Defendants violated California's Unfair Competition Law ("UCL") and/or whether Plaintiffs are entitled to damages under the UCL.
- g. Whether Defendants have been unjustly enriched.
- h. Whether Plaintiffs are entitled to equitable remedies (including restitution or disgorgement).
- i. Whether Defendants breached the implied covenant of good faith and fair dealing.
- j. Whether Plaintiffs breached the implied covenant of good faith and fair dealing and/or have unclean hands.
- k. Whether and to what extent Plaintiffs sustained damages
- l. Whether Plaintiffs may recover punitive damages from Defendants.
- m. Whether Plaintiffs may recover attorneys' fees and costs from Defendants.

4. **Motions**

There are no pending motions before the Court in this case. Defendants anticipate filing (1) a motion for judgment on the pleadings to dismiss Nationwide from this action and to challenge the sufficiency of Plaintiffs' pleading and (2) a motion to strike. There may be discovery motions if/as needed. After discovery, Defendants intend to file a dispositive motion for full or partial summary judgment per Rule 56 of the Federal Rules of Civil Procedure. If it becomes necessary, Defendants will move to bifurcate trial of punitive damages.

5. **Amendment of Pleadings**

Plaintiffs are considering voluntarily dismissing Nationwide from this action without prejudice.

6. **Evidence Preservation**

The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information and have met and conferred pursuant to Federal Rule of Civil Procedure 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action.

1           7.       **Disclosures**

2           The Parties will serve their initial disclosures on or before May 31, 2024.

3           8.       **Discovery**

4           The Parties plan to conduct discovery regarding all allegations in the complaint. The Parties  
5 anticipate propounding written discovery, and deposing the Parties and relevant third-party  
6 witnesses. Third party deposition and document subpoenas if/as needed. The Parties do not believe  
7 any modification to the Federal Rules or any stipulated e-discovery order is necessary at this time.  
8 The Parties have not identified any discovery disputes at this time. All rights reserved, not waived.

9           9.       **Class Actions**

10          Not applicable.

11          10.       **Related Cases**

12          There are no currently pending related cases.

13          11.       **Relief**

14          Plaintiff's Statement

15          Plaintiff seeks actual and compensatory damages in an amount of not less than \$235,000,  
16 statutory damages, punitive damages, attorneys' fees, pre- and post-judgment interest, and equitable  
17 relief (including disgorgement and restitution).

18          Defendants' Statement

19          Defendants seek judgment in their favor.

20          12.       **Settlement and ADR**

21          It is premature to comment on whether this matter will settle. The Parties will re-visit this  
22 issue once basic discovery has been completed. If/when appropriate, Defendants prefer private  
23 mediation as opposed to other forms of ADR.

24          13.       **Consent to Magistrate Judge**

25          The Parties have not consented to the jurisdiction of a Magistrate Judge.

26          14.       **Other References**

27          None.

15. **Narrowing of Issues**

The Parties anticipate that they may be able to stipulate to certain facts and the authenticity of documents, but believe it is premature to identify those at this time. However, as discovery progresses, the Parties will re-evaluate this issue.

16. **Expedited Trial Procedure**

The Parties do not believe this case should be handled on an expedited basis.

17. **Scheduling**

The Parties propose the following schedule for discovery, motions, and trial:

Exchange of Initial Disclosures:	May 31, 2024
Non-expert discovery cut-off:	December 20, 2024
FRCP 26(a)(2) expert disclosures:	January 27, 2025
FRCP 26(a)(2) rebuttal disclosures:	February 27, 2025
Expert Discovery cut-off:	March 31, 2025
Dispositive pre-trial motion hearing cut-off:	May 21, 2025
Pretrial conference statements:	June 11, 2025
Pretrial conference:	June 30, 2025
Trial:	August 18, 2025

18. **Trial**

The Parties anticipate trial to last 2-3 days.

19. **Disclosure of Non-Party Interested Entities or Persons**

On March 27, 2024, Defendants filed their Corporate Disclosure Statement and certification of interested entities or persons pursuant to Federal Rule of Civil Procedure 7.1 and Civil Local Rule 3-15. Defendants, by and through its counsel of record, certified that, other than the named parties, there is no such interest to report. It further certified that: Scottsdale Insurance Company is a wholly-owned subsidiary of Nationwide Mutual Insurance Company. Nationwide Mutual Insurance Company has no parent corporation and no publicly-held entity owns 10% or more of its stock. No companies under the Nationwide Mutual Insurance Company umbrella are publicly traded.

1 Plaintiffs filed their Corporate Disclosure Statement and certification of interested entities  
 2 and persons pursuant to Federal Rule of Civil Procedure 7.1 and Civil Local Rule 3-15 on April 3,  
 3 2024. Plaintiffs, by and through their counsel of record, certified that, other than the named parties  
 4 no one has an interest to report. Plaintiffs do not have any parent corporation and no publicly-held  
 5 entity owns 10 percent or more of its stock.

6 20. **Professional Conduct**

7 The attorneys of record have reviewed the Guidelines for Professional Conduct for the  
 8 Northern District of California.

9 Respectfully submitted,

10 Dated: May 9, 2024

OMNI LAW GROUP, APC

12 By: /s/ Trevor J. Zink

Trevor Joseph Zink

14 Attorneys for Plaintiffs  
 MARK KELLY, KELLY'S MANAGEMENT  
 MS, INC. and SOUTHWEST CONCESSIONS,  
 INC.

16 Dated: May 9, 2024

DENTONS US LLP

18 By: /s/ Lyndy Chang Stewart

Lyndy Chang Stewart

19 Attorneys for Defendants  
 SCOTTSDALE INSURANCE COMPANY and  
 NATIONWIDE MUTUAL INSURANCE  
 COMPANY

22 **FILER'S ATTESTATION**

23 Pursuant to Local Rule 5-1(i)(3) regarding signatures, I attest under penalty of perjury  
 24 that the concurrence in the filing of this document has been obtained from its signatories.

25 Dated: May 9, 2023

DENTONS US LLP

27 By: /s/ Lyndy Chang Stewart

Lyndy Chang Stewart